v. Ah Chuey, 33 Am. Rep. 530); in North Carolina, the exhibition of a hand alleged to have been burned (*State v. Garrett,* 17 Am. Rep. 1); in Pennsylvania, the propriety of requesting prisoner to repeat certain words that the sound of his voice might be heard (*Johnson v. Com.,* 9 Atl. 78); and in Texas, the requirement to make footprints in an ash heap (*Walker v. State,* 32 Am. Rep. 595).

On the other hand the following offered evidence has been held inadmissible: In Georgia, testimony of results of forcibly placing defendant's foot in certain tracks (*Day v. State,* 63 Ga. 667), the compulsory exhibition to a jury of the stump of an amputated leg (*Blackwell v. State,* 44 Am. Rep. 717), and testimony of forcible taking by an officer of a prisoner's shoes and comparing with tracks (*Myers v. State,* 25 S. E. 252); in Michigan, the requirement that defendant try on a shoe (*People v. Mead,* 50 Mich. 228); in New York, evidence of recent delivery of a child obtained by forcible examination by medical experts, acting under trial court's order, of a female defendant charged with murder of a bastard child (*People v. McCoy,* 45 How. Prac. 216); in Tennessee, held improper for the prosecuting attorney to place a pan of mud before jury and request the defendant to make tracks in it (*Stokes v. State,* 30 Am. Rep. 72); in Washington, held that an accused person "cannot be compelled to exhibit those portions of his body which are usually covered, for the purpose of securing identification, or in any other ways affording evidence against him" (*State v. Nordstrom,* 35 Pac. Rep. 382).

On the whole, it may be said that the courts generally stand against the invasion of personal privilege and the right of immunity from coerced exhibition or forcible inspection, notwithstanding the fact that the rigor of the old criminal law which gave reason to the rule has largely passed away. At times, it would seem, where there is a dearth of positive evidence which an examination of the prisoner's person would in all probability reveal, strict construction of this rule of privilege results in unnecessarily obstructing common justice; and in extreme cases the unjudicial mind is willing to tolerate summary punishment at the hands of the community rather than trust either the courts or the legislature.

UNCERTAINTY OF BENEFICIARIES IN CHARITABLE TRUSTS.

There is a great diversity of opinion in the United States as to the degree of uncertainty or indefiniteness admissible in the beneficiaries of a charitable trust. There may perhaps be said to be three different classes: (1) In those States where the statute 43 Elizabeth is recognized, great liberality in this respect is generally allowed, and trusts are seldom declared void however indefinite the beneficiaries may be, provided a power of appointment is vested somewhere, following the maxim *id certum est quod certum reddi potest;* (2) In other States the construction is much more strict; (3) while in some States no distinction in regard to the beneficiaries

is made between charitable and other trusts. It is the very uncertainty of the beneficiaries which gives jurisdiction in chancery. *State v. Griffith,* 2 Del. Ch. 392; *Chambers v. St. Louis,* 29 Mo. 589. And the better and more correct view would seem to be that though the persons to be benefited constitute a very large number and may possibly include all mankind, still the trust may be sustained if its purpose is sufficiently designated in the instrument creating it. *Jackson v. Phillips,* 14 Allen 539; *George v. Braddock,* 45 N. J. Eq. 757, 14 Am. St. 754; *Thornton v. Howe,* 31 Beav. 14; *Perry, Trusts,* sec. 705. The donor may, however, appoint trustees, and invest them with discretion to apply the fund toward a charitable purpose specified, leaving them in its application, to select from numerous persons or institutions which shall receive the bounty, or the testator may specify the charitable purpose in terms so general that the trustees must necessarily exercise a discretion in determining which of many purposes falling within the general description they shall seek to accomplish. Whether, in such a case, courts of equity in this country retain authority over the trust so as to control its administration and make it certain, and thereby declare it a valid charitable trust, is a question upon which the courts are irreconcilably divided. The majority of them perhaps maintain that courts of chancery as a part of their judicial power possess authority to so far control the administration of the trust as to compel trustees to execute it within the limits of the discretion conferred upon them, and the trust may be sustained. *Tappan v. Deblois,* 45 Me. 122; *Swasey v. Amer. Soc.,* 57 Me. 523; *Minot v. Baker,* 147 Mass. 348; *Chambers v. St. Louis,* 29 Mo. 543; *Missouri Hist. Soc. v. Acad. of Science,* 94 Mo. 459; *Murphy's Estate,* 184 Pa. St. 310; *Att'y Gen. v. Wallace,* 7 B. Mon. 611; *Moore v. Moore,* 4 Dana 354.

In this connection two interesting recent cases in Kentucky are worthy of notice. The court in *Thompson's Ex'r. v. Brown,* 70 S. W. 674, held a bequest in trust to be "distributed to the poor" void for indefiniteness of beneficiaries; and yet in *Coleman v. O'Leary's Ex'r.,* 70 S. W. 1068, the same court held that a bequest in trust "for the establishment of a home for poor men" was not uncertain and that the trustees would act under the authority of the chancellor. The former case apparently overrules the long settled doctrine in Kentucky, both as quoted by text book writers and as understood in its previous decisions. See *2 Perry on Trusts,* sec. 748; *5 Am. & Eng. Enc. Law,* 905-912. It is difficult to understand how the court if it follows its line of reasoning can hold the trust in *Coleman v. O'Leary, supra,* valid if the bequest in *Thompson v. Brown* is void. One apparently is as indefinite as the other, and if the latter is valid it certainly involves a marvellous degree of discrimination into the quantum of indefiniteness that will render a charitable trust invalid. Likewise with former decisions of the same court it is impossible to reconcile the doctrine in *Thompson v. Brown.* In *Curling v. Curling,* 8 Dana 38, Robertson, C. J., said: "As the testator has manifested an intention to dedicate his estate

to one specified class of objects embraced by the statute, if his bounty can be applied to any single object within that class, consistently with his declared purpose, and without the hazard of violating his will or making a will for him, there is no doubt that it is a trust which may be lawfully executed, and judicially upheld and enforced." And in *Moore v. Moore,* 4 Dana 354, 365, said the same judge: "When an ascertainable object is designated by the donor in general or collective terms, or when a person is appointed by him to elect a described portion or kind from a designated class, the chancellor will interpose on the ground of trust." Why, therefore, in this case of a bequest "to be distributed to the poor" is the class not sufficiently designated that the beneficiaries cannot be selected so as not to violate or to make a will for the testator? And if in *Coleman v. O'Leary,* the court determines that a home for poor men in the district of the trustee will carry out the testator's intention, why could not a similar administration be made of the bequest "to the poor?"

The court bases its decision on *Spalding v. Industrial School,* 54 S. W. 200 (Ky.), a bequest "for charitable objects," which was held invalid for uncertainty. While with more reason perhaps, it may be said that no designated class is referred to in "charitable objects," still a bequest "to the poor" is to such a designated class that it is not the same as one to "charitable objects." A gift for the benefit of the poor in general has been upheld in many cases. *Vidal v. Girard,* 2 How. 127; *Darcy v. Kelly,* 153 Mass. 433; *Bullard v. Chandler,* 149 Mass. 532; *State v. McDonough,* 8 La. Ann. 171; *Nash v. Morley,* 5 Beav. 177; *Att'y.-Gen. v. Clarke,* Amb. 422; *Clement v. Hyde,* 50 Vt. 716; *Jackson v. Phillips,* 14 Allen 539; *Doughten v. Vandever,* 5 Del. Ch. 51. And the famous statute of 43 Eliz. in enumerating "the pious and godly uses" to which it applies, employs no more definite descriptions than the following: "relief of the aged," "maintenance of sick and disabled soldiers and marines," "the marriage of poor maids," "the supportation of tradesmen and handicraftsmen," and that of "persons decayed." In many cases a high degree of indefiniteness of beneficiaries has been supported. A gift for "indigent, unmarried, Protestant females" is valid. *Tappan's App.,* 52 Conn. 412. And likewise a gift "for the greatest relief of human suffering, human want, and the good of the greatest number." *Everett v.Carr,* 59 Me. 334. And a gift to assist, relieve and benefit poor and necessitous persons will be upheld. *Suter v. Hilliard,* 132 Mass. 412; *Rotch v. Emerson,* 105 Mass. 431. Or a devise to be applied "to the dissemination of the gospel at home and abroad" is valid, as being sufficiently certain. *Att'y.-Gen. v. Wallace,* 46 Ky. (7 B. Mon.) 611; *Kinney v. Kinney,* 86 Ky. 610, 6 S. W. 593.

On the other hand, the cases where such bequests as to the poor in general have been held invalid are principally in what may be termed "strict construction" States, or States where no distinction is made between charitable and private trusts. Thus a bequest for

"foreign missions and poor saints" has been held void for uncertainty. *Bridges v. Pleasants,* 39 N. C. (4 Ired. Eq.) 26. And so a bequest of money to be distributed among "needy poor and respectable" widows is void. *Galley v. Att'y. Gen.,* 3 Leigh (Va.) 450. And in New York (until statute 1893), North Carolina, Maryland, Michigan, Virginia, and Wisconsin it has been declared that the statute 43 Eliz. did not extend to this country.

But inasmuch as Kentucky has always allowed a very high degree of indefiniteness in beneficiaries of charitable bequests, and the Statute 43 Eliz. is almost bodily incorporated into the statutes, and the court professes to follow and not overrule the former decisions it would seem that it was incorrectly held that a bequest "to the poor" is invalid.